IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.48761 of 2006
ABDUL RASHID MIAN
Versus
STATE OF BIHAR & ANR

For the petitioner : Mr. Ashutosh Kumar, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For Opp.Party No.2 : Mr. Arun Kumar Prasad, Advocate

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The second party to a proceeding under Section 145 Cr.P.C., being case no.211 of 1980 being exasperated by the protracted pendency of a proceeding meant for taking emergent measures to prevent breach of the peace and maintain tranquility has prayed for the quashing of order dated 16.9.2006 passed therein by the learned Sub Divisional Magistrate, Mahnar, whereby instead of dropping the proceeding he has directed for adducing evidence.

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The said proceeding was drawn up on the basis of an application filed by the first party who has been impleaded herein as Opp.Party no.2. It appears that pursuant to a petition filed by the petitioner herein on 3.9.2005 for dropping the proceeding which had continued for almost 25 years, the Sub Divisional Magistrate, Mahnar, notwithstanding the rejoinder filed by the first party , dropped the proceeding on the said grounds. Of course the said order or the date thereof has not been furnished but the fact remains confirmed in the subsequent order of the District Magistrate, Vaishali at Hajipur dated 2.12.2005 passed in the transfer petition filed under Section 411 Cr.P.C.

It appears that the first party after dropping of the

proceeding moved a transfer petition before the District Magistrate who though noticing the fact of the proceeding having been dropped nevertheless directed the Sub Divisional Magistrate, Mahnar to pass speaking order explaining his satisfaction over dropping of the case. It was also directed that in case the order has already been passed, then he would listen to the parties and decide the matter judiciously. It further appears that the Sub Divisional Magistrate pursuant to the order of the District Magistrate directed the first party to produce his evidence on the next date instead of dropping the proceeding or hearing the parties.

There is no dispute over the powers of the District Magistrate under Section 411 Cr.P.C to make over for disposal any proceeding to any Magistrate or withraw any case from or recall any case which he may have made over to any Magistrate. However, this Section does not empower the District Magistrate to act as an appellate or revisional forum of the Sub Divisional Magistrate nor can he issue directions to do or not to do a certain thing. Though, the order of the District Magistrate has not been challenged, the same cannot be a preventive ground for this Court to declare the said order as unwarranted.

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There is another aspect of the matter. Admittedly, proceedings under Section 145 Cr.P.C. are primarily meant to prevent the breach of the peace and tranquility and normally it is the actual physical possession of a party in dispute which is to be decided. Therefore, what the Section pre supposes is the taking of emergency

measures to prevent breach of the peace and public tranquility.

As held in the case of Sastu Sahu –Vrs. Nathuni Thakur (AIR 1924 Pat.689) it is highly desirable that once the hearing of a case under Section 145 Cr.P.C. is commenced and witnesses are examined the hearing should go on from day to day until all the evidence is taken and argument is heard; then order should be passed as soon as possible.In other words a proceeding under Section 145 Cr.P.C. is not expected to carry on for ages and degenerate into the format of a civil suit.

In the instant case, the proceeding admittedly is continuing for 25 years. It is not expected and is difficult to believe that an apprehension of breach of peace which existed 25 years ago was still continuing after the passage of twenty five years. Such protracted pendency appears to be an abuse of the court and no gainful purpose will be served in continuing the same.

Accordingly, the application is allowed and the proceeding under Section 145 Cr.P.C. is quashed.

(Abhijit Sinha, J)

Patna High Court,Patna
Dated : the 29th August,2008
Nawal Kishore Singh/ A.F.R.

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